

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

DON QUARLES, an Individual;)
and, QUARLES ACRES, LLC,)

Plaintiffs,)

v.)

Case No. 00-CV-913-GKF-PJC

UNITED STATES OF AMERICA,)
ex rel. BUREAU OF INDIAN AFFAIRS;)

JURY TRIAL DEMANDED

UNITED STATES OF AMERICA,)
ex rel. ENVIRONMENTAL)

PROTECTION AGENCY; TEXACO,)

INC; PHILLIPS PETROLEUM CO.;)

CONOCOPHILLIPS CO.; SUN OIL)

CO.; LITTLE RIVER ENERGY CO.;)

YARHOLA PROD. CO.; SPESS OIL)

CO., INC.; THE LINK OIL CO.;)

and TONY OIL CO.,)

Defendants.)

**PLAINTIFFS' MOTION TO RECONSIDER IN LIMINE ORDER, OR
ALTERNATIVELY TO CONTINUE DAUBERT HEARING AS TO J. BERTON FISHER**

Plaintiffs, Don Quarles and Quarles Acres, LLC, ("Quarles") submit this *Motion to Reconsider the Court's In Limine Order (Dkt.# 402), or alternatively, to Continue the Daubert Hearing as to Expert J. Berton Fisher ("Fisher")*, and in support thereof hereby state:

In light of the recent testimony at the June 18, 2007 Daubert Hearing, and this Court's request for additional evidence, Quarles hereby submits visual evidence of the hydrological flow of surface and groundwater on Quarles' property onto Lake Skiatook to which Expert Fisher can describe in detailed testimony to this Court at the July 27, 2007 Motion and Daubert Hearing. (*Exhibit A.*)

Fisher's testimony at the June 18, 2007 Daubert Hearing, and his previous exhaustive opinions in his expert reports, that oil field wastes and pollutants on Plaintiffs' property caused surface and subsurface soil and water damage can be illustrated by this visual evidence. Fisher is expected to testify that the flow of surface water on Quarles' property from areas of salt scarring, soil salinization, brine and petroleum contamination reaches Lake Skiatook. Lake Skiatook is down-gradient from Quarles' property. Also down-gradient from Quarles' property, the United States Government is conducting environmental testing on the soil and water of Osage County. The United States Geological Survey ("USGS") (and other environmental scientists) is involved in a multidisciplinary investigation named Osage Skiatook Petroleum Environmental Research ("OSPER") at two named sites "A" and "B". Soil and water sampling from those sites to date show that impacts of produced water and associated hydrocarbons on soil, surface and groundwater at both sites and surrounding areas, are widespread and pervasive.¹ All wells show some degree of contamination from produced water and/or petroleum or its degradation products.² This illustrative testimony by Expert Fisher will enable this Court to reconsider its previous ruling excluding Fisher's testimony on damage to surface water and subsurface water on Quarles' property from current and historic oil production facilities.

WHEREFORE, Quarles respectfully requests this Court to reconsider its In Limine Order, or alternatively, to continue the Daubert Hearing of Expert J. Berton Fisher to July 27, 2007.

¹ Kharaka, Y.K. and Otton, J.K., 2003, Environmental Impacts of Petroleum Production: Initial Results from the Osage Skiatook Petroleum Environmental Research Sites, Osage County, Oklahoma: U.S. Geological Survey Water Resources Investigations Report 03-4260.

² Id.

Respectfully submitted,

DRUMMOND LAW, PLLC

/s/ Donna Marie De Simone

Gentner F. Drummond OBA #16645

Donna Marie De Simone, OBA #18271

1500 South Utica Ave. Ste. 400

Tulsa, Oklahoma 74104-6522

(918) 749-7378

CERTIFICATE OF MAILING

I hereby certify that on this 2th day of July 2007, a true and correct copy of the above and foregoing document, was mailed electronically, to:

Natalia Sorgente, Esq.
United States Department of Justice
Environmental and Natural Resources Division
P. O. Box 23986
Washington, DC 20026-3986
Natalia.Sorgente@usdoj.gov

Cathryn McClanahan, Esq.
Assistant United States Attorney
110 West 7th Street, Suite 300
Tulsa, OK 74119
cathy.mcclanahan@usdoj.gov
Attorneys for United States of America

Ronald N. Ricketts, Esq.
Mia Vahlberg, Esq.
GABLE & GOTWALS
1100 ONEOK Plaza
100 West Fifth Street
Tulsa, OK 74103-4217
rricketts@gablelaw.com
Attorneys for Texaco, Inc. and Getty Oil. Co.

Lloyd W. Landreth, Esq.
Landreth Law Firm, PLC
801 East B Street
Jenks, OK 74037-4307
llandreth@landrethlaw.com
Attorneys for Phillips Petroleum Co.

Colin H. Tucker, Esq.
John H. Tucker, Esq.
Rhodes Hieronymus Jones Tucker & Gable
P. O. Box 21100
Tulsa, OK 74121-1100
jtuckercourts@rhodesokla.com
Attorneys for Sun Oil Co.

Lee Ira Levinson, Esq.
Rick D. Westcott, Esq.
Bodenhamer & Levinson
1743 East 71st Street
Tulsa, OK 74136-5108
rickwestcott@hotmail.com
*Attorneys for Little River Energy Co., Inc. and
Yarhola Production Co. and for Spess Oil Co.*

Guy Clark, Esq.
Northcutt, Clark, Gardner, Hron & Tate
P.O. Drawer 1669
Ponca City, OK 74602-1669
gclark@northcuttlawfirm.com
Attorney for Link Oil

P. Scott Hathaway, Esq.
Melinda Kirk, Esq.
CONNER & WINTERS, LLP
4000 One Williams Center
Tulsa, OK 74172-0148
shathaway@cwlaw.com
Attorneys for Tony Oil Co.

Michael L. Darrah, Esq.
Durbin, Larimore & Bialick
920 North Harvey
Oklahoma City, OK 73102-2610
Mdarrah@dlb.net
Attorneys for Tony Oil Co.

/s/Donna Marie De Simone
Donna Marie De Simone